

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN**

STEPHEN JOHNSON,

Petitioner,

v.

Case No. 07C0672

MATTHEW FRANK,

Respondent.

ORDER

Stephen Johnson, a prisoner, filed a pro se petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254, asserting that respondent, Secretary of the Department of Corrections, violated his constitutional rights when he revoked his parole and extended his supervision. In 1993, petitioner was convicted of armed robbery and sentenced to fifteen years in prison. He was paroled in 2002, and in 2006, the Department of Hearings and Appeals (DHA) revoked his parole and re-incarcerated him.

After the DHA denied petitioner's administrative appeal, petitioner applied for a writ of certiorari in circuit court. The court however denied his request to waive the filing fees because he had three or more previous dismissals. See Wis. Stat. § 801.02(7)(d). Instead of seeking a modification of that decision or appealing it, petitioner petitioned the state court of appeals for a supervisory writ. The court of appeals rejected his petition, indicating that he should have appealed the circuit court's decision. Petitioner then appealed to the state supreme court, which denied review.

I cannot address the merits of petitioner's constitutional claims unless he first exhausts the remedies available to him in the state courts. 28 U.S.C. § 2254 (b)(1)(A). Although petitioner exhausted his administrative remedies, he failed to exhaust the judicial remedies available to him. He did not present his constitutional arguments to any state court, and thus, no state court has had the opportunity to address them. This is a procedural default. See Bintz v. Bertrand, 403 F.3d 859, 863 (7th Cir. 2005). Moreover, to the extent petitioner attempted to raise his constitutional claims in state court, he did so through improper procedures. Finally, petitioner makes no attempt to show cause and prejudice for his default.

For the foregoing reasons,

IT IS THEREFORE ORDERED that the petition for habeas corpus is **DENIED**, and this case **DISMISSED**.

Dated at Milwaukee, Wisconsin this 14 day of October, 2009.

/s_____
LYNN ADELMAN
District Judge